

APPEAL NO. 041656
FILED AUGUST 24, 2004

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing (CCH) was held on May 25, 2004. The hearing officer resolved the disputed issue by deciding that the appellant (claimant) is not entitled to supplemental income benefits (SIBs) for the 14th quarter. The claimant appealed, contending that she is unable to work. The respondent (self-insured) asserts that the evidence supports the hearing officer's decision.

DECISION

Affirmed.

Section 410.203(a)(1) provides that the Appeals Panel shall consider the record developed at the CCH. We do not consider the treating doctor's report attached to the claimant's appeal to be newly discovered evidence because it is cumulative of the treating doctor's reports in evidence and predates the CCH by over a year.

Eligibility criteria for SIBs entitlement are set forth in Section 408.142(a) and Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 130.102 (Rule 130.102). The SIBs criterion in dispute is whether the claimant made a good faith effort to obtain employment commensurate with her ability to work. It is undisputed that the claimant did not work or look for work during the qualifying period. The claimant contended that she had no ability to work during the qualifying period due to her compensable injury. Rule 130.102(d)(4) provides that an injured employee has made a good faith effort to obtain employment commensurate with the employee's ability to work if the employee has been unable to perform any type of work in any capacity, has provided a narrative report from a doctor which specifically explains how the injury causes a total inability to work, and no other records show that the injured employee is able to work. Rule 130.102(e) provides in part that, except as provided in subsection (d)(1), (2), (3), and (4) of Rule 130.102, an injured employee who has not returned to work and is able to return to work in any capacity shall look for employment commensurate with his or her ability to work every week of the qualifying period and document his or her job search efforts. We note that the report of the designated doctor appointed under Section 408.151 was not received by the Texas Workers' Compensation Commission until several months after the qualifying period in issue. See Rule 130.110(a).

The hearing officer found that the claimant was able to perform some type of work during the qualifying period based on a functional capacity evaluation, which she determined was another record which showed that the claimant had an ability to work. The hearing officer further found that the claimant did not make a good faith effort to obtain employment commensurate with her ability to work during the relevant qualifying period and concluded that the claimant is not entitled to SIBs for the 14th quarter. The

hearing officer is the sole judge of the weight and credibility of the evidence. Section 410.165(a). As the finder of fact, the hearing officer resolves the conflicts in the evidence and determines what facts have been established. We conclude that the hearing officer's decision that the claimant is not entitled to SIBs for the 14th quarter is supported by sufficient evidence and is not so against the great weight and preponderance of the evidence as to be clearly wrong and unjust. Cain v. Bain, 709 S.W.2d 175 (Tex. 1986).

We affirm the hearing officer's decision and order.

The true corporate name of the insurance carrier is **STATE OFFICE OF RISK MANAGEMENT (a self-insured governmental entity)** and the name and address of its registered agent for service of process is

For service in person the address is:

**JONATHAN BOW, EXECUTIVE DIRECTOR
STATE OFFICE OF RISK MANAGEMENT
300 W. 15TH STREET
WILLIAM P. CLEMENTS, JR. STATE OFFICE BUILDING, 6TH FLOOR
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For service by mail the address is:

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Robert W. Potts
Appeals Judge

CONCUR:

Chris Cowan
Appeals Judge

Edward Vilano
Appeals Judge